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of the state permits the counties to provide for "those inhabitants, who, by reason of age, infirmity or other misfortune, may have claims upon the sympathy and aid of society." This is broad enough to include farmers who, by reason of the failure of their crops, are brought to the edge of ruin and who without help will become charges upon public charity. Loans of public money to such persons are for a public purpose. The conflicting view expressed by the supreme court of Kansas in 1875 (*State v. Osawkee Township*, 14 Kan. 418; 19 Am. Rep. 99) merely "shows how even mighty minds are circumscribed by the spirit of their time." The statute in the present case confined the benefits of the act to those needy farmers who were resident freeholders, and thereby raised the question of arbitrary discrimination against homesteaders and renters. On the theory that the court should so construe a law as to validate it if that can be done without violence to its language, the court held that both the tenant farmer and the homesteader could take advantage of the provisions of the law, such an interpretation being in harmony with its general purpose. This case is in harmony with decisions handed down by the supreme courts of North Dakota and Minnesota. See *State v. Nelson County* (1 N. D. 88; 45 N. W. 33) and *Deering and Co. v. Peterson* (75 Minn. 118; 77 N. W. 568).

War Problems. *Alien Enemies—Nonresident—License Under Trading With the Enemy Act.* *Hungarian General Credit Bank v. Titus* (New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 926). The plaintiff was a Hungarian corporation. It held the defendant's promissory note for \$5000. In accordance with the provisions of the Trading With the Enemy Act the attorney for the plaintiff corporation applied to the alien property custodian and secured from him a license permitting the prosecution of an action to collect the note. It is here held that there is no authority in the statute for the issuance of such a license. The act provides that under certain conditions the President may authorize the licensing of nonresident alien enemies to carry on business in this country, and that such licensees may sue in any cause of action arising out of the business they are licensed to carry on. The plaintiff had no such license to do business in the United States and could not, therefore, be given a license to sue in the courts of this country. The action was accordingly stayed until the close of the war.

Alien Enemies Resident in United States—Right to Sue—Trading With the Enemy Act. Tortoriello v. Seghorn (New Jersey, Chancery, March 12, 1918, 103 Atl. 393); Krachanake v. Acme Mfg. Co. (North Carolina, April 24, 1918, 95 S. E. 851); Arndt-Ober v. Metropolitan Opera Company (New York, Supreme Court, 169 N. Y. Supp. 304; also New York, Appellate Division, April 5, 1918, 169 N. Y. Supp. 944). These three cases all involve the question of the rights and privileges of resident alien enemies under the Trading With the Enemy Act. In the New Jersey case an unnaturalized German had entered into a contract to sell real estate before the passage of the act. He resisted an action brought for a writ of specific performance to compel him to sell in accordance with the terms of his contract, on the ground that he was forbidden to engage in such a transaction by the provisions of the law. The other two cases involve the right of resident alien enemies to institute suits in the courts of this country. In each case it was pointed out by the court that the Trading With the Enemy Act makes the test of enemy character residence and not nationality and that the only enemy aliens living in this country who are to be regarded as enemies within the meaning of the statute are those that have been interned for the period of the war. Accordingly a German citizen living in New Jersey could be compelled to carry out his contract, and other enemy aliens resident here have the same right of access to the courts that American citizens have.

Articles of War—Scope—Persons Accompanying the Armies of the United States. Ex parte Gerlach (U. S. District Court—December 10, 1918, 247 Fed. 616). Gerlach was employed by the United States shipping board and was sent by them to Europe. He was there discharged and sent back on an army transport. On the return voyage he volunteered to stand watch but finally, as the ship was passing through the danger zone, refused to do so. He was thereupon court-martialed and sentenced to five years imprisonment for disobedience of orders. He appealed from this conviction on the ground that he was not subject to the jurisdiction of a military court. The Articles of War, as amended August 29, 1916, make subject to military jurisdiction "All retainers and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, etc." The court decided that the Articles of War applied not only on land, but in any place where military operations

were being conducted. Gerlach was a person accompanying the armies of the United States and voluntarily serving in connection with them. He was accordingly amenable to military discipline. Furthermore, the captain of the vessel had the right, apart from the authority bestowed by the Articles of War, to compel all on board to help protect the ship from imminent peril. The court-martial accordingly had exclusive jurisdiction in this case.

Conscription Act—Constitutionality—Stare Decisis. Cox v. Wood (U. S. Supreme Court, May 6, 1918, 38 Sup. Ct. 421). The appellant in this case claimed that the Selective Draft Law is unconstitutional because its avowed purpose is to compel men to serve in the army which is to be sent out of the country. It was argued that while Congress could draft men into the national militia it could use the militia thus organized only "to execute the laws of the Union, suppress insurrections and repel invasions." This precise point had not been considered by the court in its opinion in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159) upholding the constitutionality of the conscription act. The opinion in this case, however, states that the earlier decision had rested upon grounds broad enough to meet this argument. The right of Congress to create a conscript army rests upon the constitutional authority which it enjoys to declare war and raise armies, and this broad authority is not hedged in by any "limit deduced from a separate and for the purpose of the war power wholly incidental if not irrelevant and subordinate provision concerning the militia found in the constitution."

The court was requested by the counsel for the government to strike from the files the brief presented by the appellant's counsel, Mr. Hannis Taylor, on the ground that it contained passages which were "scandalous and impertinent." The court agreed that the passages "justify the terms of censure by which they are characterized in the suggestion made by the government," but refused to grant the motion to strike on the ground that "the passages on their face are so obviously intemperate and so patently unwarranted that, if as a result of permitting the passages to remain on the files they should come under future observation, they would but serve to indicate to what intemperance of statement an absence of self-restraint or forgetfulness of decorum will lead, and therefore admonish the duty to be sedulous to obey and respect the limitations which an adhesion to them must exact."

Conscription Act—Desertion—Persons Subject to Military Law. Franke v. Murray (U. S. Circuit Court of Appeals, February 14, 1918, 248 Fed. 865). A conscientious objector on religious grounds, whose claim for exemption was denied and who was ordered to report for transportation to training camp, refused to do so and was arrested and tried by a court-martial for the crime of desertion. He alleged that he was not a deserter since he had never joined the army, that he was merely subject to civil prosecution for whatever offense he may have committed, and that the conscription act was invalid because it delegated legislative power to the President. The court found no virtue in these arguments. The Selective Draft Act clearly makes a man subject to military law from the time he is drafted, certainly from the time he is accepted for service and receives notice to report. Failure thus to report makes him a deserter therefore. The rules regarding voluntary enlistment do not apply, and a man is a member of the national army even before he takes an oath at the time of actual induction. The conscription act, furthermore, specifically exempts from the jurisdiction of the civil courts those persons which are made subject to military law. The contention that the law is void because it delegated legislative power to the President has been effectively disposed of by the decision of the Supreme Court in the Selective Draft Cases (245 U. S. 366; 38 Sup. Ct. 159).

Conscription Act—Who Are Declarant Aliens Within Its Terms. United States v. Mitchell (U. S. District Court, February 27, 1918, 248 Fed. 997); Gazzola v. Commanding Officer of Ft. Totten (U. S. District Court, March 6, 1918, 248 Fed. 1001); United States ex rel. Warm v. Bell (U. S. District Court, February 27, 1918, 248 Fed. 1002); Halpern v. Commanding Officer at Camp Upton (U. S. District Court, February 27, 1918, 248 Fed. 1003); United States ex rel. Pfefer v. Bell (U. S. District Court, February 19, 1918, 248 Fed. 992). The conscription act provides for the exemption from compulsory military service of aliens, but makes liable to such service aliens who have declared their intention to become naturalized and who have taken out their first papers. In the Mitchell case a Russian citizen who had taken out his first papers had allowed a period of more than seven years to elapse, so that at the time he was drafted he had lost his right to become naturalized. It was held that he was still a declarant and therefore subject to draft. The fact that his first papers had lapsed did not create any presumption that he had resumed his old allegiance to a foreign

country, and as long as he remained in this country he retained the status of a declarant. Gazzola was an Italian who took out first papers in 1909 but was refused final papers because of his conviction for the illegal sale of liquor. The court decided that he was still a declarant and liable to draft, inasmuch as he was not precluded from reapplying for citizenship at some future time. Warm and Halpern were both Austrians who had taken out their first papers at the time they were drafted. It was held that they could not subsequently be released by the courts on the ground that after their induction into the army they had become alien enemies by reason of the declaration of war on Austria. Their induction was entirely lawful at the time it occurred, and the conscription act provides no method of discharging alien enemies from the ranks by any judicial process. In the Pfefer case, after considering some of the familiar arguments against the validity of the draft act and answering them in the usual way, the court considered the contention that the statute was void because it violated certain provisions in the treaties between the United States and foreign nations, in this case Russia, and the further argument that it violated rules of international law by which Congress is bound. The court replied by saying that any treaty could be overridden and repealed by a subsequent act of Congress, and that "the rules of international law, like those of existing treaties or conventions, are subject to the express acts of Congress, and the courts of the United States have not the power to declare a law unconstitutional, if it be within the authority given to congress as to legislation, even though the law itself be in contravention of the so-called law of nations."

Courts-Martial—Review of Decisions by Civil Courts. People v. Stotesbury (New York, Sup. Ct. App. Div., April 5, 1918, 169 N. Y. Supp. 998). An officer in the New York National Guard was convicted by court-martial of disobedience of orders and neglect of duty. This conviction was reversed by the appellate division of the supreme court, after a review of the evidence in the case, because the court "discovers no evidence whatever of either refusal or neglect, and therefore considers itself competent and enabled to review and to reverse the findings of the court-martial."

Espionage Act—Disloyal Utterances as Violation of. U. S. v. Hall (U. S. District Court, January 27, 1918, 248 Fed. 150). The defendant in this case was charged with a violation of the Espionage Act of June

15, 1917. He had made slanderous remarks about the President, impugned the motives of this country in entering the war, and expressed the hope that Germany would win. The court decided that he had not violated any of the provisions of the Espionage Act. He had not circulated false reports because the things he had said were expressions of opinion and not statements of fact. He had not tried to cause insubordination in the military and naval forces of the United States, because no specific intention to produce such a result could be shown, and because there were no armed forces within reach to be influenced by his remarks. "It is as if A shot with a .22 pistol with intent to kill B two or three miles away." Finally there was no willful obstructing of recruiting or enlistment, because it could not be shown that the defendant's utterances had actually influenced anyone against enlisting. The court expresses its conviction that "the more or less public impression that for any slanderous or disloyal remark the utterer can be prosecuted by the United States is a mistake." The defendant could doubtless have been convicted had the amended Espionage Act of May, 1918, been in force at the time the remarks complained of were uttered.

Internment—Liability of Declarant Alien. Ex parte Graber (U. S. District Court, January 15, 1918, 247 Fed. 882). A citizen of an enemy country, who has taken out his first papers but has never completed his naturalization, is subject to internment for the period of the war if the government decides that the public safety demands it. Such a person has not renounced his allegiance to a foreign country, but has merely declared his intention of doing so at a future time. He has not yet ceased to be an alien and the outbreak of war has made him an enemy alien. The President acting through properly constituted authorities is the final judge as to the necessity of detaining any enemy alien. The courts will not review his action.

Vice—Power to Suppress Near Military Posts—Constitutionality. United States v. Casey (U. S. District Court, January 11, 1918, 247 Fed. 362); United States v. Scott (U. S. District Court, February 28, 1918, 248 Fed. 361). The defendants in these two cases denied the constitutional authority of the secretary of war to issue a proclamation in pursuance of section 13 of the Selective Service Act making it a penal offense to establish or maintain a house of prostitution within five miles of any military post or station. It was alleged that this was

an unconstitutional invasion of the police power of the states. In each case the court sustained the validity of the statutory provision and the proclamation. These restrictions were not imposed as an exercise of police power but as an exercise of the war power of Congress. The power to raise and equip an army carries with it by implication the power to protect the morals of the soldiers composing it. Nor was there any unconstitutional delegation of legislative power to the secretary of war. He did not make the law nor decide what its policy and scope was to be. He merely gave effect through an administrative regulation to the law which was already complete when it left the hands of Congress.

War—Incomplete State of—Criminal Liability of Mexican Soldiers for Killing American Soldiers. Arce v. State (Texas, Court of Criminal Appeals, April 17, 1918, 202 S. W. 951). The four defendants in this case were soldiers under the military authority of the Carranza government in Mexico. As such they participated in an attack upon United States troops at San Ygnacia and were captured. They were tried for the murder of the American soldiers whose lives were lost in the encounter and were convicted and sentenced to be executed. This decision reverses the conviction. The court recognized that at the time of the fighting, a state of war existed between the United States and Mexico, even though it might be regarded as an inchoate and incomplete state of war. This being true the Mexican soldiers engaged in such war were amenable to the rules of international law, or perhaps to our national law, for acts committed in this country, but not to the law of the state of Texas. If they were guilty of crime they should have been tried in the federal courts. But even if the state had jurisdiction in this case the conviction of the defendants must be reversed because in their conduct they had been subject to the authority of their superior officers, so that no criminal liability could attach to their acts done in pursuance of the orders of those officers.